

## **INITIAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation proposes to amend Sections 3000, 3190, 3213, and 3334 of the California Code of Regulations (CCR), Title 15, Division 3, concerning inmate religious property. These regulations make provisions governing inmate religious property based upon institution mission and security levels, and incorporates by reference into Title 15, a Religious Property Matrix (RPM). The incorporation of the RPM is being adopted in accordance with the rulemaking requirements of the Administrative Procedures Act.

Prison inmates may possess specified personal property items for religious use, in accordance with the First Amendment of the United States Constitution and the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). In addition, Section 5009 of the California Penal Code sets out a legislative intent that “prisoners shall be afforded reasonable opportunities to exercise religious freedom.” Subject to these federal and State laws, the purpose of these regulations is to provide a standardized list of allowable religious property items. The incorporation of the RPM into the Title 15 minimizes discrepancies between what is allowed in each institution, and standardizes approved inmate religious property statewide. The proposed regulations also include minor revisions to the Authorized Personal Property Schedule (APPS) by removing provisions in the APPS for “religious items,” and placing them in a separate matrix dedicated to religious property. The Department determined that religious property was distinct enough from other inmate personal property to warrant its own separate treatment and matrix. In this way, the RPM and the APPS can be revised as needed independently.

The Department weighed institutional security concerns against the interests of inmates in order to determine reasonable religious property standards. Reasons for the religious property standards include, but are not limited to: (1) providing statewide standardization concerning allowable religious items for inmates, (2) compliance with existing court mandates, (3) reducing potential inmate litigation, (4) reducing the ability for inmates to barter or trade religious property, and (5) ensuring security and safety in the institutions.

A Warden’s Advisory Group (WAG)/Statewide Religious Review Committee for inmate religion issues was utilized as a workgroup dedicated to providing guidance to senior staff throughout the State on how to best establish religious property standards, and resolve inmate religious property issues. The WAG/Statewide Religious Review Committee consists of, but is not limited to: Wardens, Chaplains, Community Partnership Managers, and representatives from the Department’s Ombudsman Office. Extensive collaboration with the WAG/Statewide Religious Review Committee allows the Department to better identify inmate religious property needs, and weigh them with an institution’s security level. The specific items of religious property were established by the WAG/Statewide Religious Review Committee based partially upon current Federal Bureau of Prisons Guidelines (Program Statement-Religious Beliefs and Practices, Number P5360.09, December 31, 2004, [www.bop.gov/policy/progstat/5360\\_009.pdf](http://www.bop.gov/policy/progstat/5360_009.pdf)), and relevant court cases, e.g. Joint Settlement Agreement for *Rouser v. White*, USDC, Eastern District of California, Case No. 2:93-cv-0767-LKK-GGH(PC), which is attached and included in this Initial Statement of Reasons.

The RPM shall be updated no more frequently than twice yearly to accommodate any changes that may be needed, both in terms of religious practices (adding, revising, or removing), and in terms of emerging security concerns. Security concerns may include issues such as a documented misuse of religious items to manufacture weapons (e.g., stabbing instruments, choking instruments), or to hide contraband. Local exceptions to the individual mission-based property lists for religious items shall be granted in rare instances, if at all, based on a compelling institutional need.

Facilities may submit requests to be exempted from religious personal property items. These exemption requests are to be submitted to the Chief, Standardized Procedures Unit, with a copy to the appropriate mission-based Associate Director. All requests must include a compelling rationale and supporting data such as incident reports, physical plant limitations, etc. In the case of an emergency, where the safety of inmates, staff, or other persons are at immediate risk, the requesting institution may temporarily implement a requested exemption pending approval/disapproval by the Deputy Director, Division of Adult Institutions.

Inmates may acquire specific personal property through personal property packages (commonly referred to as inmate packages or annual/quarterly packages) and through “Special Purchases” at their own expense or through a third party. Personal property packages must be acquired through departmentally approved vendors who have met specific criteria as mandated by the Department. Typical items acquired include: clothing, food, hygiene items, and miscellaneous items. Special purchase items are identified specifically in CCR, Title 15, Section 3190(i) and include: religious items, healthcare appliances, legal materials, correspondence courses, handicraft materials, entertainment appliances/musical instruments, and publications. Special purchase vendors can be authorized at the local level and do not have to meet the criteria set forth for departmentally approved personal package vendors, except as provided for publications, as specified in Title 15, Sections 3190(i)(2) and 3190(i)(7).

The Department’s intent is to permit the inmate population to possess as much allowable religious property as practical, in keeping with safety and security needs. Inmates may possess authorized religious property items consistent within the six cubic feet limitations. Per, CCR, Title 15, Section 3190(c), the six cubic feet limitation is identified as: the combined volume of state-issued and allowable personal property items that do not exceed six cubic feet, except as specifically allowed in the regulations. By standardizing allowable religious property, the safety and security needs of the institutions are supported by helping to keep the amount of personal property to a necessary limit of six cubic feet, which aids staff in detecting contraband during a cell search, and will reduce the possibility of fire hazards in the inmate’s cell.

The RPM is necessary due to the need for statewide standardization, to resolve the inconsistency among institutions of what religious property is allowed, and to acknowledge the constitutional rights of inmates to practice a religion.

### **Consideration of Alternatives:**

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in

carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

### **ECONOMIC IMPACT ASSESSMENT:**

In accordance with Government Code Section 11346.3(b), the Department of Corrections and Rehabilitation (CDCR) has made the following assessments regarding the proposed regulation:

#### **Creation or Elimination of Jobs Within the State of California**

The incorporation of the RPM, and amendments for religious property language have no effect on the creation or elimination of jobs within California because they are not affected by the internal management of prisons.

#### **Creation of New or Elimination of Existing Businesses Within the State of California**

The incorporation of the RPM, and amendments for religious property language have no effect on the creation of new or elimination of existing businesses within the State of California because they are not affected by the internal management of prisons.

#### **Expansion of Businesses or Elimination of Existing Businesses Within the State of California**

The incorporation of the RPM, and amendments for religious property language have no effect on the expansion of businesses or the elimination of existing businesses within the State of California because they are not affected by the internal management of prisons.

### **Benefits of the Regulations**

The proposed regulatory action will benefit inmates and CDCR staff by creating a standardized list of allowable religious property items. This will minimize further litigation against the Department, and help to eliminate discrepancies among institutions, while also providing inmates their religious freedom rights. The implementation of the proposed regulation will also ensure the security and safety of the institutions.

### **Materials Relied Upon:**

The Department, in proposing amendments to these regulations, has in part relied upon Federal Bureau of Prisons Guidelines, Program Statement-Religious Beliefs and Practices, Number P5360.09, December 31, 2004, and Joint Settlement Agreement for *Rouser v. White*, USDC, Eastern District of California, Case No. 2:93-cv-0767-LKK-GGH(PC).

**Specific Purpose and Rationale for each Section, per Government Code 11346.2(b)(1)**

**TABLE OF CONTENTS, Subchapter 2. INMATE RESOURCES, Article 9. Personal Property, title heading is amended** to add the words “and Religious Property” to provide for a more accurate title heading, and consistency within the proposed regulations.

**Chapter 1. Rules and Regulations of Adult Operations and Programs**

**Article 1. Behavior**

**3000. Definitions**

**Section 3000 is amended** to replace the definition of “Religious Artifact” with “Religious Item” as more appropriate and consistent verbiage. In addition, the removal of “bible” within the definition provides consistency with the RPM and provides clarity, as Departmental standards for publications are specified within Sections 3190(i)(7) and 3133(b)(4).

**Subchapter 2. Article 9. Personal Property and Religious Property**

**Subchapter 2, Article 9 title is amended** to include “and Religious Property” within the title heading. This provides for a more accurate title heading, as religious property is now incorporated into this article.

**3190. General Policy**

**Subsection 3190(a) is amended** to include religious property items, which inmates shall be permitted to possess in their quarters/living area. The addition of this language is necessary due to the separation of religious property from the APPS, and the incorporation of the new RPM.

**Subsection 3190(b) is amended** to add language to distinguish the APPS from the RPM. This language clarifies that the APPS identifies a list of “personal property,” and does not include “religious property.” In addition, new language is added to identify and incorporate the RPM (12/1/12). This amendment is necessary to provide a separate standardized list of allowable religious property items into the California Code of Regulations, which can be easily referenced, and aid in eliminating discrepancies among institutions.

**Subsections 3190(b)(1) through 3190(b)(5) are amended** to change the revision date of the APPS from 2/1/08 to 12/1/12, since the APPS was revised due to the removal of religious property items from it.

**Subsection 3190(i)(4) is amended** by deleting old language which referred to institutional Chaplains and designated custody staff as approvers of religious items, and replacing with “as listed within the Religious Property Matrix.” This is necessary to make clear that the RPM is to be used as the basis for determination of allowable religious property.

## **Subchapter 3. INMATE ACTIVITIES**

### **Article 1. Religious Program**

#### **3213. Stipulations Regarding Religious Items, Sanctuaries, and Sacramental Wine.**

**3213 title is amended** to remove the word “Artifacts” and replace it with “Items.” This is necessary for consistency within the Section, and to more appropriately identify religious property.

**Subsection 3213(a)(1) is amended** to replace the word “artifact” with “item” as more appropriate and consistent verbiage.

**Subsection 3213(a)(2) is amended** to replace the word “artifact” with “item” as more appropriate and consistent verbiage.

**Subsection 3213(a)(3) is amended** to replace the word “artifact” with “item” as more appropriate and consistent verbiage.

**Subsection 3213(b) is amended** to replace medicine bag dimensions from 1 ½ inches in diameter to 2 x 3 inches in diameter.

**Subsection 3213(c) is amended** to replace the word “artifacts” with “items” as more appropriate and consistent verbiage.

## **Subchapter 4. GENERAL INSTITUTION REGULATIONS**

### **Article 6.5. Behavior Management Unit**

#### **3334. Behavior Management Unit.**

**Subsection 3334(g)(1)(B) is amended** to delete language referencing the specifications of religious medals and chains, and to replace language with “as identified within the Religious Property Matrix.” This is necessary to make clear that the RPM is to be used as the basis for determination of allowable religious property while assigned to the Behavior Management Unit.

**Subsection 3334(g)(1)(C) is amended** to delete language regarding religious items, and replace language with “as identified within the Religious Property Matrix.” This is necessary to make clear that the RPM is to be used as the basis for determination of allowable religious property while assigned to the Behavior Management Unit.

#### **The Authorized Personal Property Schedule (APPS) is amended in its entirety to:**

- All references to the Revision Date are updated from 2-1-08 to 12-1-12.

- All references to religious items on pages 8, 11, 19, 22, 30, 33, 41, 44, 55, and 59 are removed. This is necessary because they will be placed in a separate religious property matrix, which will better serve inmates and staff alike by standardizing religious property items.